

10/698,608  
Ascherman**RESPONSE**

Claims 11 and 21 have been amended. No claims have been cancelled. No new claims have been added. Claims 1-10, 12-20 and 22 have been withdrawn from consideration. Claims 11 and 21 remain pending in the application.

***Objections/Rejections  
Under 35 U.S.C. §112******1.0 The Examiner has objected to the specification for a variety of informalities.***

Applicant has amended paragraphs [0006], [0010], [0021], [0029], [0031], [0041] and [0044] of the specification as suggested by the Examiner for purposes of reconciling the informalities.

***2.0 The Examiner has objected to claim 21 for lack of the conjunction "and" after subpart (i).***

Applicant has amended claim 21 to insert the missing conjunction.

***3.0 The Examiner has rejected claim 11 for lack of congruency between the preamble and the body of the claim.***

Applicant has amended the preamble of claim 11 to provide the congruency requested by the Examiner.

***4.0 The Examiner has rejected claim 21 for use of the indefinite phrase "significantly greater than".***

Applicant has amended claim 11 by replacing the phrase "significantly greater than" with the phrase "high gas transmission rate". The standard for ascertaining the scope of the phrase "high gas transmission rate" is set forth in the specification at paragraphs [0010] and [0021] (*i.e.*, the gas transmission rate of the guard material is sufficiently greater than the test material that the variable  $TR_1$  may be dropped from the equation used to calculate the gas transmission rate of the test sample as set forth in paragraph [0009]).

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Ascheman***Objections/Rejections  
Under 35 U.S.C. §103***

**5.0** *The Examiner has rejected claim 11 as obvious over Lucero (United States Patent No. 3,926,561).*

**SUMMARY OF CITED REFERENCE**

**Lucero** discloses a gas analysis instrument. The instrument includes a test chamber having a first diffusion cell and a second diffusion cell separated by a permeable membrane (60) sandwiched between annular support rings (64 and 66) and/or support grids (74).

**SUMMARY OF CLAIMED INVENTION**

**The Embodiment of The Present Claimed Invention** set forth in claim 11 is directed to an instrument which includes a test chamber having a first diffusion cell and a second diffusion cell separated by a test material sample with a support grid positioned over the test material sample adjacent the second diffusion cell and a guard material between the test material sample and the support grid.

**LEGAL BASIS**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaack, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). See, M.P.E.P. § 2143.

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LUCERO DOES NOT DISCLOSE

EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION

**The Embodiment of The Present Claimed Invention** set forth in claim 11 includes sequential layers of a test sample, a guard material and a support grid between diffusion cells. The instrument of Lucerno includes a permeable membrane and a support grid between diffusion cells, but does not disclose, teach or suggest a guard material between the permeable membrane and the support grid.

**CONCLUSION**

Applicant respectfully submits that all pending claims (claims 11 and 21) are in condition for allowance.

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20 May 05

Respectfully submitted,

By

M. Sherrill

Michael S. Sherrill, #32,302  
SHERRILL LAW OFFICES, PLLC  
4756 Banning Avenue, Suite 212  
White Bear Lake, Minnesota 55110-3205  
(651) 426-2400